



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/146735

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly terminated the Petitioner's grandson's BadgerCare Plus benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Sharon Thacker
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's grandson LP was enrolled in BC+ from February 1, 2008 – July 31, 2008 on his mother's case.
3. Petitioner's grandson has lived with the Petitioner approximately 7 years.

4. On April 29, 2009, the agency issued a Notice of Decision to the Petitioner informing her that as of June 1, 2009, Petitioner and her son were enrolled in BC+. The notice informed the Petitioner that her grandson LP was not enrolled in BC+ due to not meeting the eligibility requirements of a child under 19 living with her. The notice further informed the Petitioner of the right to file a hearing regarding the determination with the Division of Hearings and Appeals by July 16, 2009.
5. Subsequent Notices of Decision were issued by the agency to the Petitioner on October 27, 2009, May 18, 2011, May 31, 2011, and June 2, 2011. Each notice informed the Petitioner that her grandson was not enrolled in BC+ due to not meeting the eligibility requirements of a child under 19 living with her. The final notice on June 2, 2011 informed the Petitioner of the right to appeal the determination by filing an appeal with the Division of Hearings and Appeals by July 19, 2011.
6. On January 16, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning AFDC or MA must be filed within 45 days of the date of the action. Wis. Stats. § 49.45(5). A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed more than 3 years after the date of the original denial. It was filed almost 18 months after the final denial on June 2, 2011. Thus, the Petitioner's appeal is untimely, and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

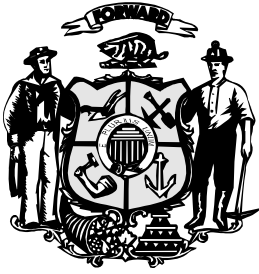
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of March, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 13, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability